

NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Modern Towel & Linen Supply Service and Amalgamated Service & Allied Industrial Joint Board, Unite, AFL-CIO. Case 29-CA-20998

November 8, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge filed by the Union on May 13, 1997, the General Counsel of the National Labor Relations Board issued a complaint on August 7, 1997, against Modern Towel & Linen Supply Service, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On October 14, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On October 16, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 16, 1997, notified the Respondent that unless an answer were received by September 23, 1997, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a New York corporation, with an office and place of business located at 652 Sackett Street, Brooklyn, New York, where it is engaged in the linen and laundry supply and related services. During the year preceding

issuance of the complaint, the Respondent purchased and received at its Brooklyn facility products, goods, and materials valued in excess of \$50,000 from other enterprises located within the State of New York, each of which other enterprises, in turn, purchased and received said products, goods, and materials directly from points outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees of the Employer excluding all guards and supervisors as defined by the Act.

Since January 1993, and at all material times, the Union has been the exclusive collective-bargaining representative of the unit employees and since then, the Respondent has been recognized as such representative by the Employer. This recognition has been embodied in successive collective-bargaining agreements, the most recently expired being effective by its terms for the period December 29, 1995, to November 27, 1996. At all material times, the Union, by virtue of Section 9(a) of the Act has been the exclusive representative of the employees in the unit.

About December 28, 1995, the Respondent signed a Memorandum of Understanding stating that it would be bound by the terms of a successor collective-bargaining agreement which would be negotiated between the Union and a multiemployer collective-bargaining committee (the Association). From about October 11 to about November 24, 1996, the Union and the Association negotiated a successor collective-bargaining agreement. About November 14, 1996, the Union and the Association reached complete agreement on terms and conditions of employment of the Association's unit to be incorporated in a collective-bargaining agreement with a term of November 28, 1996, to November 27, 2000 (the 1996-2000 agreement). Since about November 27, 1996, the Union, by letter, requested that the Respondent execute a Memorandum of Agreement which formally accepted the terms of the 1996-2000 agreement. Since about November 27, 1996, the Respondent orally informed the Union that it refused to execute the 1996-2000 agreement, and, since that date, the Respondent has failed and refused to apply the terms and conditions of the 1996-2000 agreement.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain col-

lectively with the exclusive collective-bargaining representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has, since about November 27, 1996, refused to execute the 1996–2000 agreement and has failed and refused to apply the terms and conditions of that agreement, we shall order the Respondent to sign and execute the 1996–2000 agreement and give effect to its terms since November 27, 1996. The Respondent will also be required to make whole all unit employees who incurred a loss of wages or benefits as a result of the Respondent's refusal to comply with the terms of its agreement. Backpay shall be computed in accordance with the Board's decision in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), with interest thereon to be computed in the manner described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Modern Towel & Linen Supply Service, Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to execute the 1996–2000 collective-bargaining agreement, or, failing and refusing, since November 27, 1996, to apply the terms and conditions of the 1996–2000 agreement to the following unit employees:

All employees of the Employer excluding all guards and supervisors as defined by the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Sign and execute the 1996–2000 agreement and give effect to its terms since November 27, 1996.

(b) Make whole all unit employees who incurred a loss of wages or benefits as a result of the Respondent's refusal to execute and comply with the terms of the 1996–2000 agreement since about November 27, 1996, in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination

and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 13, 1997.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 8, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to execute the collective-bargaining agreement with the Amalgamated Service & Allied Industrial Joint Board, UNITE, AFL-CIO, effective from November 28, 1996, to November 27, 2000 (the 1996-2000 agreement).

WE WILL NOT fail or refuse to apply the terms and conditions of the 1996-2000 agreement the following unit employees:

All employees of Modern Towel & Linen Supply Service excluding all guards and supervisors as defined by the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL execute the 1996-2000 agreement and give effect to its terms since November 27, 1996.

WE WILL make whole all unit employees who incurred a loss of wages or benefits as a result of our refusal to execute and comply with the terms of the 1996-2000 agreement since about November 27, 1997, with interest.

MODERN TOWEL & LINEN SUPPLY
SERVICE